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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,459	07/11/2003	Marshall T. Denton	2078-5372US	3865
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EXAMINER				
GANEY, STEVEN J				
ART UNIT		PAPER NUMBER		
3752				
NOTIFICATION DATE		DELIVERY MODE		
03/19/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

### Office Action Summary

**Application No.**

10/618,459

**Applicant(s)**

DENTON, MARSHALL T.

**Examiner**

Steven J. Ganey

**Art Unit**

3752

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7, 10-13, 17-20, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 17-20 is/are allowed.
- 6) ☒ Claim(s) 2, 11, 12, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 3-7 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The indicated allowability of claims 2, 11, 12, 24 and 25 are withdrawn in view of the references to Riley et al, Heine and Cobb. New rejections based on the cited references follow.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riley et al in view of Heine.

Riley et al discloses a container/bottle 114; a resilient element 106 to form self-biased engagement with a wall of the cylindrical portion at a plurality of locations, except for an extension conduit between a pump mechanism and an atomizing nozzle, and the conduit also being malleable and deformable. Heine discloses an atomizer assembly comprising a malleable and deformable extension conduit A and an atomizing nozzle H. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the resilient element of Riley et al for a pump type atomizer since such a modification is merely the substitution of one pressurizing means for another and the resilient element of Riley et al would perform equally as well on a pump type sprayer as well as the pressurized sprayer as disclosed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the malleable and deformable conduit of Heine for the conduit 56 of Riley et al since with such a modification the atomizing nozzle can be placed at an orientation to facilitate spraying hard to reach areas.

With respect to applicant's statements of intended use, i.e. (to permit suspension of the bottle by the resilient element in a receiving socket of a storage device), the resilient element of Riley et al is capable of performing applicant's intended use, therefore, the claims are fully anticipated.

4. Claim 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb.

Cobb discloses a fluid atomizer comprising a bottle/container 12; a spray head 24; a conduit 66 with an atomizing nozzle end 64; and a brace 32a/34a/52a, except for the brace being used for a pump type fluid atomizer and the pump head, conduit and atomizing nozzle being a unitary assembly. See Figures 9 and 10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the brace of Cobb for a pump type atomizer since such a modification is merely the substitution of one pressurizing means for another and the brace of Cobb would perform equally as well on a pump type sprayer as well as the pressurized sprayer as disclosed. As shown in Figure 1A, the end of the conduit by the nozzle resists motion, therefore the up and down motion of a pump sprayer would not affect the end of the conduit by the nozzle.

As to claims 11 and 12, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pump head, conduit and atomizing nozzle a unitary assembly, since it has been held that forming in one piece an article which has formerly

been formed in pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

5. Claim 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobb in view of Heine.

Cobb, as discussed above, discloses an atomizer assembly comprising all the featured elements of the instant invention, except for an extension conduit between a pump mechanism and an atomizing nozzle, and the conduit also being malleable and deformable. Heine discloses an atomizer assembly comprising a malleable and deformable extension conduit A and an atomizing nozzle H. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the brace of Cobb for a pump type atomizer since such a modification is merely the substitution of one pressurizing means for another and the brace of Cobb would perform equally as well on a pump type sprayer as well as the pressurized sprayer as disclosed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the malleable and deformable conduit of Heine for the conduit 66 of Cobb since with such a modification the atomizing nozzle can be placed at an orientation to facilitate spraying hard to reach areas.

***Allowable Subject Matter***

6. Claims 10 and 17-20 are allowed.

7. Claims 3-7 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Spurlock et al, Strickland and Craig show spray devices with conduits having malleable and deformable portions.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 9:00-5:00; Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven J. Ganey/  
Primary Examiner  
Art Unit 3752

sjg  
3/3/08